

2012 IL App (2d) 110442-U  
No. 2-11-0442  
Order filed June 28, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Stephenson County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-199
	)	
VICTOR J. SELLERS,	)	Honorable
	)	Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Schostok concurred in the judgment.

**ORDER**

*Held:* The evidence was sufficient to sustain defendant's conviction for theft over \$300.

¶ 1 Following a bench trial, defendant, Victor J. Sellers, was convicted of theft over \$300 (720 ILCS 5/16-1(a)(1), 16-1(b)(4) (West 2010)) and found not guilty of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)). Defendant was sentenced to 30 months' probation, ordered to pay \$639 in restitution and a fine of \$535, and ordered to have no contact with the victim. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of theft over \$300. We affirm.

¶ 2

## I. BACKGROUND

¶ 3 Defendant and Stacey Engebretson, the victim, lived at 570 East Sierra in Freeport and were in a relationship for about seven months. In this relationship, Engebretson paid all of the bills and other expenses. According to Engebretson, on July 17, 2010, defendant and Engebretson argued at their apartment. During the argument, defendant took the keys of the vehicle that belonged to Engebretson. Once the argument made its way outside, defendant proceeded to go through Engebretson's vehicle to search for her cell phone. Engebretson testified that, while searching for the cell phone, defendant found in the middle console an envelope of cash belonging to her and put it in his pocket to keep until he and Engebretson could further discuss their relationship.

¶ 4 Engebretson further testified that, at the time of the occurrence, she worked at Lena Nursing Home as a certified nursing assistant. The night before her argument with defendant, she worked a shift from 2:30 p.m. until 10:30 p.m. That same evening, Engebretson cashed her \$639 paycheck. She testified that the cash, which she had counted, was in a Citizens Bank envelope that she placed into the middle console of her vehicle.

¶ 5 According to Engebretson, on July 17, 2010, mid-morning, she was moving things out of the apartment (after a four-day absence) when defendant suddenly appeared from behind a door and shoved her to the floor. Engebretson moved to the bedroom, where defendant tried hitting her with a plastic clothes hanger. Defendant then shoved her to the floor a second time and slapped her across the face. He proceeded to the kitchen where he put blue pills in his mouth in an attempt to kill himself, and, when Engebretson offered to help with water, he spit out the pills. Defendant got a knife, which he used to scare Engebretson. He also struck himself in the head. Defendant subsequently grabbed Engebretson's vehicle keys from her. At that point, the argument was taken

outside. According to Engebretson, while they were both in the vehicle, defendant began looking for her cell phone, found an envelope of cash, put it in his pocket, and said he would only give it back after he and Engebretson discussed their relationship. Engebretson exited the car. Defendant continued looking for the phone and located Engebretson's old phone. Defendant next drove the car toward Engebretson and stopped just short of hitting her. Defendant eventually exited the car, threw out of the car some of Engebretson's belongings, and cooled down. Engebretson left the scene in her vehicle. While outside, Engebretson had observed an older neighbor walking his dog.

¶ 6 Officer Tony Bradbury testified that Engebretson filed a complaint against defendant on July 17, 2010. She gave Bradbury a copy of her paycheck stub, the original of which he had previously viewed. (The paycheck stub was not admitted into evidence.) Bradbury and Engebretson proceeded to the apartment where he witnessed scattered blue pills on the floor and possessions arranged as though someone was moving out.

¶ 7 Gerald Lange, age 77 and a neighbor, testified that, on July 17, 2010, as he was walking his dog, he saw an African-American man and a Caucasian woman arguing. However, he did not identify the man or the woman as defendant or Engebretson. Lange did say that he saw the man drive a vehicle toward the woman (he "gunned it") and stop immediately, but Lange did not witness the man put anything in his pocket.

¶ 8 Defendant, age 25, testified that he and Engebretson argued on July 17, 2010, and that he took Engebretson's keys because he did not want her to leave. He denied physically touching Engebretson. Defendant further testified that he took the kitchen knife and cut himself. Defendant conceded that he went out to Engebretson's car to look for her cell phone (which he did not locate), but denied seeing a Citizens Bank envelope and denied taking an envelope or cash from

Engebretson. Defendant explained that he did not take any of Engebretson's money because "she gives me money." The argument lasted about one hour. Defendant was angry. He saw Lange outside.

¶ 9 The trial court acquitted the defendant of domestic battery, but found him guilty of theft over \$300. The court found Engebretson credible, specifically finding that she had cashed her check at some point and that the \$639 was in her car. It further found that defendant took this money and had reason to take it because he was about to lose his financial support. On April 21, 2011, the court sentenced defendant to 30 months' probation, ordered \$639 in restitution, imposed a \$535 fine, and ordered that defendant have no contact with Engebretson.

¶ 10 On March 7, 2011, defendant moved to set aside the verdict, vacate the judgment, and for a new trial, which the trial court denied. Defendant appeals.

¶ 11

## II. ANALYSIS

¶ 12 On appeal, defendant argues that the evidence was insufficient to sustain his theft conviction. Defendant contends that he could not be found guilty of theft because: (1) *corpus delicti* was not established; and (2) Engebretson's testimony contained irregularities. When evaluating the sufficiency of evidence, it must be determined, in a light most favorable to the prosecution, whether a reasonable fact finder could have found the defendant guilty beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Findings by the trier of fact are given great deference, especially in cases involving credibility determinations. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 180 (1989). It is not the reviewing court's position to retry the defendant, but it is our duty to set aside a conviction where the evidence demonstrates that the defendant could not be found guilty beyond a reasonable doubt. *People v. Bocclair*, 129 Ill. 2d 458, 474 (1989).

¶ 13 The theft statute provides, in pertinent part, that a person commits theft when he knowingly “[o]btains or exerts unauthorized control over property of the owner.” 720 ILCS 5/16-1(a)(1) (West 2010). Here, defendant was convicted of “knowingly obtain[ing] or exert[ing] unauthorized control over” §639.

¶ 14 Turning to defendant’s first argument, proof a criminal offense can be separated into two parts: (1) *corpus delicti*; and (2) that the defendant was the offender. *People v. Furby*, 138 Ill. 2d 434, 445-46 (1990). *Corpus delicti* is the requirement that the State prove injury or loss that was caused by criminal conduct. *People v. Rivera*, 2011 IL App (2d) 091060, ¶ 41. Defendant contends that the evidence did not demonstrate *corpus delicti*, specifically, that nothing in the evidence proved he deprived Engebretson of her property. Defendant relies on *People v. Glisson*, 324 Ill. App. 3d 249, 253-54 (2001), *aff’d*, 202 Ill. 2d 499 (2002), in which the court held that *corpus delicti* had not been established because there was no evidence to show that the property in question belonged to anyone other than the defendant. Defendant also relies on *People v. Butler*, 28 Ill. 2d 88, 91-92 (1963), where the court concluded that the evidence did not show that the defendant was the only one who could have stolen the property at issue because no one observed the defendant take the property and there were others in the apartment who had an equal opportunity to commit the crime. *Butler*, 28 Ill. 2d at 91-92. The case at hand is distinguishable because, unlike the *Glisson* and *Butler* cases, which provided no evidence of an owner being deprived of his or her property, Engebretson testified that she observed defendant take her money.

¶ 15 Turning to defendant’s second argument, we reject the assertion that irregularities in Engebretson’s testimony control the outcome of this case. The trial court determined that Engebretson was a credible witness, and this we do not contest. See *People v. Sutherland*, 223 Ill.

2d 187, 243 (2006) (weight of testimony, credibility of witnesses, and inconsistencies are for the trier of fact to determine). Engebretson testified that she saw defendant take an envelope of \$639 belonging to her, without her consent, and then refuse to give back the money. She further testified to being in the car when defendant took her cash, which she had counted earlier. Although Engebretson testified to cashing her paycheck the evening of July 16, 2010, a point defendant disputed, the trial court found that Engebretson cashed her check at some point. We disagree with defendant that the possibility that Engebretson may have cashed her check on July 17, 2010, a possibility the trial court alluded to, on its own, renders her testimony incredible, and we do not find that the trial court's determination was unreasonable. Further, Engebretson stated she had been paying all of defendant's bills and was going to end her relationship with (and financial support to) defendant when the incident happened. A rational trier of fact could have determined that this imminent change in his circumstances provided defendant with motive for the theft. It is not our duty to determine the credibility of witnesses, and this court will not replace the judgment made by the trier of fact, even when evidence was conflicting, unless the evidence showed reasonable doubt of the defendant's guilt. *People v. Akis*, 63 Ill. 2d 296, 298 (1976). Although defendant contends Engebretson's testimony contained internal irregularities, we conclude Engebretson's testimony was sufficient to prove him guilty beyond a reasonable doubt.

¶ 16

### III. CONCLUSION

¶ 17 For the above-stated reasons, the judgment of the circuit court of Stephenson County is affirmed.

¶ 18 Affirmed.